

# EXHIBIT 1

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1           UNITED STATES DISTRICT COURT  
2           FOR THE DISTRICT OF MASSACHUSETTS  
3           NO. 4:09-cv-11340-FDS

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5  
6  
7        ABBOTT GMBH & CO., KG,                  )  
8        ABBOTT BIORESEARCH CENTER,                )  
9        INC., AND ABBOTT                              )  
10      BIOTECHNOLOGY LTD.,                          )  
11      Plaintiffs,                                     )  
12      vs.   )  
13      CENTOCOR ORTHO BIOTECH,                    )  
14      INC., AND CENTOCOR                          )  
15      BIOLOGICS, LLC.,                             )  
16      Defendants.                                    )  
17      \_\_\_\_\_  
18  
19  
20  
21  
22  
23  
24

VIDEOTAPED DEPOSITION OF  
MICHAEL J. GRUSBY, PhD  
THURSDAY, 30 SEPTEMBER 2010  
8:03 AM

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1       Q.   So at some point after that --

2       A.   Uh-huh.

3       Q.   -- did you consider what the construction  
4       should be of certain claim terms in the patents  
5       that are marked as Exhibits 1 and 2?

6       A.   Yes, I was asked to consider the  
7       construction of claim terms.

8       Q.   When was that?

9       A.   About a month or six weeks ago.

10      Q.   Do you remember any -- strike.

11           Can you pin it down any more particular  
12          than that, other than, "about a month or six weeks  
13          ago"?

14      A.   Oh, it was towards the middle to the end  
15          of August.

16      Q.   What were you asked to do?

17      A.   Consider the construction of claim terms.

18      Q.   So what did you do first?

19      A.   I read a document that was provided to me  
20          by Wilmer Hale.

21      Q.   What was that document?

22      A.   The document was, I believe -- I forgot  
23          exactly what the document was called, but it was a  
24          document that discussed the construction of claim

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1 terms.

2 Q. What did you mean by "discussed the  
3 construction of claim terms"?

4 A. It was a document that had claim terms  
5 that discussed what the meaning of the claim terms  
6 were.

7 Q. So the document had a claim term and a  
8 meaning of that claim term?

9 A. That is correct.

10 Q. Were those meanings the meanings that  
11 Wilmer Hale has proposed for the construction of  
12 these claim terms?

13 A. That was contained within the document.

14 Q. So that's what you were provided with --

15 A. That's correct.

16 Q. -- at the start of considering this?

17 A. That's correct.

18 Q. Were you provided with Centocor's proposed  
19 construction?

20 A. I was.

21 Q. That was in the same document --

22 A. It was.

23 Q. -- different document?

24 A. Same document.

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1                 Did you consider any particular parts of  
2         the '128 patent?

3                 A.     Did I consider? I read the patent, so --  
4         I read the entirety of the patent. So in some  
5         sense, I would say that I considered the whole  
6         patent.

7                 Q.     So you considered the whole '128 patent as  
8         part of your work preparing for your declaration.

9                 A.     Yes.

10                Q.     And so you reviewed the entire  
11         specification of the '128 patent?

12                A.     I did.

13                Q.     Did you review all the claims of the '128  
14         patent?

15                A.     I did.

16                Q.     Are there any other documents that you  
17         reviewed in preparing for your declaration about  
18         claim construction?

19                A.     No.

20                Q.     Did you review the prosecution history of  
21         the patents that are marked at Exhibit 1 or 2?

22                A.     I did not.

23                Q.     You've never looked at the prosecution  
24         history?

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1 A. I do -- I don't think that I did.

2 Q. Are you aware that there was a prior  
3 proceeding related to these patents that's called  
4 an "interference"?

5 A. I am aware that there was one.

6 Q. Did you review any of the record of that  
7 interference in preparing your declaration about  
8 claim construction?

9 A. I do not believe that I did.

10 Q. Okay. So just to make sure we've wrapped  
11 it up, are there any other documents that you can  
12 remember that you reviewed --

13 A. No.

14 Q. -- in preparing your declaration?

15 Other than the attorneys at Wilmer Hale,  
16 did you talk to anybody as part of the work related  
17 to preparing your declaration on claim  
18 construction?

19 A. Just my wife.

20 Q. Is your wife -- strike it.

21 Were those conversations substantive about  
22 the substance of the claim constructions?

23 A. They were not.

24 Q. Okay. I've marked as Plaintiffs' Exhibit

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1 proliferation assay is.

2 Q. And so, according to the patent, a human  
3 PHA blast proliferation assay is an assay where,  
4 "antiIL-12 antibodies were evaluated for their  
5 ability to inhibit PHA blast proliferation, which  
6 proliferation is stimulated by IL-12," right?

7 A. In the context of the patent, I would say  
8 that that's what a human PHA blast proliferation  
9 assay is.

10 Q. And so an antibody that inhibits  
11 phytohemagglutinin blast proliferation in an in  
12 vitro PHA assay is an antibody that shows  
13 inhibition in the assay, as described on Column  
14 110 --

15 MR. McELWAIN: Objection.

16 Q. -- is that right?

17 A. No, I didn't say that, and I don't think  
18 that the description of the human PHA blast  
19 proliferation assay says that.

20 Q. So what does it mean in the context of the  
21 patent for an antibody to inhibit  
22 phytohemagglutinin blast proliferation in an in  
23 vitro PHA assay?

24 MR. McELWAIN: Objection.

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1 mean by that?

2 MR. McELWAIN: But in the context of the  
3 patent, Matt, what do you mean by that? If you're  
4 talking about the claim, talk about the claim. If  
5 you're talking about the specification, talk about  
6 that. But this is just some sort of weird game  
7 here.

8 Q. Maybe this is just a misunderstanding.

9 Do you have an opinion as to what that  
10 phrase, "inhibits phytohemagglutinin blast  
11 proliferation in an in vitro PHA assay" means?

12 A. Do I have an opinion about what it means?  
13 No, I really don't have an opinion. But my  
14 understanding of what it means is that, one  
15 conducts a human PHA blast proliferation assay, as  
16 described here in Column 110.

17 Q. And what's described in Column 110 is that  
18 PHA blast proliferation is stimulated by IL-12,  
19 right?

20 MR. McELWAIN: Objection.

21 A. It says that, "PHA blast proliferation,  
22 which proliferation is stimulated by IL-12."

23 That that would be the way that the human  
24 PHA blast proliferation assay is conducted.

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1       not testifying.

2           A. I -- I'm not offering an opinion. I am  
3       making a declaration as to -- generically here --  
4       what the inhibition of interferon-gamma production  
5       -- what -- what constitutes an assay where the --  
6       where one looks at the inhibition of  
7       interferon-gamma production.

8           Q. So if I understand your testimony, you're  
9       not offering an opinion as to what the term,  
10      "inhibits interferon-gamma production" means in the  
11      context of the patent; is that right?

12          A. I -- I am -- no. I am not making a  
13      definition of that, no.

14          Q. Okay. Let's go back to the patent.

15          How does the patent describe how to test  
16      for inhibition of production of interferon-gamma,  
17      or inhibition of interferon-gamma production?

18          A. Again, in Column 111, Section D describes  
19      the assay that's used for the interferon-gamma  
20      induction assay.

21          Q. And it's -- it reads for -- I'll just read  
22      the first part of it.

23          A. Uh-huh.

24          Q. You let me know if I misread it.

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1                 "The interferon-gamma induction assay is  
2 described as measuring -- "I guess "-- the ability  
3 of antiIL-12 antibodies to inhibit the production  
4 of interferon-gamma by PHA blasts, which production  
5 is stimulated by IL-12"; is that right?

6                 A.    That's correct.

7                 Q.    Is there any other part of the patent that  
8 describes how to measure the inhibition of  
9 interferon-gamma production?

10                A.    I honestly can't say whether there is or  
11 isn't.

12                Q.    You don't know, one way or the other?

13                A.    I don't remember whether there is or not.

14                Q.    Are you offering an opinion in relation  
15 to, you know, your declaration, as to what it means  
16 for an antibody to inhibit IL-12 binding to its  
17 receptor in an IL-12 receptor-binding assay?

18                A.    Am I offering my opinion -- so can you  
19 rephrase that question and explain what you mean by  
20 "offering an opinion"?

21                Q.    Sure. There's -- I'm not trying to be  
22 tricky.

23                A.    And I'm not trying to be evasive.

24                Q.    So have you, in -- in the process of